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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/533,048	03/22/2000	Jay H. Connelly	042390.P8387	8359
7590	06/16/2005			EXAMINER
James Y Go Blakely Sokoloff Taylor and Zafman LLP Seventh Floor 12400 Wilshire Boulevard Los Angeles, CA 90025-1026			BARQADLE, YASIN M	
			ART UNIT	PAPER NUMBER
			2153	
			DATE MAILED: 06/16/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/533,048	CONNELLY, JAY H.	
	Examiner Yasin M. Barqadle	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 February 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) _____ is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7, 9-19, 21-23 and 25-30 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/16/2003</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Response to Amendment

1. The Amendment filed on February 15, 2005 has been entered and made of record.

2. The Amendment filed on February 15, 2005 has been fully considered but are not deemed to be persuasive.

- Claims 8, 20, and 24 are cancelled.
- Claims 1-7, 9-19, 21-23 and 25-30 are presented for examination.

Response to Amendment

3. Applicant argues in page 10, second paragraph that "Herz does not disclose selecting data files described by metadata to store based on rating generated for the data files, or store such selected data files when they are broadcast." Examiner contends that Herz disclose selecting data files (video programs) with characteristic describing particular video programs such as classification category, directors, actors, degree of sex and/or violence, and the like (col. 5, lines 1-29). Based on monitoring which video programs are actually watched by customers and the feed back obtained from customer

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watching habits and their preference rating of movies and video programs selected data file are stored in client's set top box Col. 6, lines 63 to col. 7, line 17; col. 26, lines 2-33; and col. 43, lines 5-52].

Applicant argues in page 14, second paragraph "the electronic program guide data only pertains to programming that is already scheduled." Examiner respectfully disagrees. The electronic program guide data includes the content profile (viewing habits) that is monitored for the purpose of optimally scheduling the channels for transmission from the head end in accordance with the recorded customer preferences (col. 8, 60-67 and col. 42 lines 42 to col. 43 line 15).

Finally, in page 13, last paragraph, Applicant argues, "Herz provides no means for storing video programming." Examiner respectfully disagrees. Herz provides means for storing a video program and the associated content files at set top multimedia terminal 620 such as memory 902, 904 and 908, fig. 9 and col. 46, lines 51 to col. 47, line 24).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 1, 6-7, 9-11, 14-15, 19, 21-23, and 25-30 rejected under 35 U.S.C. 102(e) as being anticipated by Hertz et al USPN (6088722).

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As per claim 1,11,15, Hertz teaches a method, apparatus and a machine readable-medium, comprising (figs. 4-5 and 9 col. 43, lines 31-52 and col. 46, lines 51-65):

receiving meta-data broadcast (col. 4, lines 39-65 and col. 42, lines 21-34) by a server system at a client system (Figs. 4-5 and fig. 9, terminals 412), the meta-data including attributes describing the content of respective data files from among a plurality of data files (characteristics of video programs col. 5, lines 1-16) to be broadcast later by the server system (see Fig. 5 and fig. 9, distribution system in 502), data representing customer habits are sent as feed back from customer terminal to CATV head end for the purpose of optimally scheduling for transmission from the head end in accordance with the recorded customer preferences [col. 8, lines 60-67; col. 26, lines 26-53 and Col. 42, lines 42 to Col. 43, line 52];

generating ratings for each of the plurality of data files via the client system (rating is generated using different techniques col. 31, lines 14-18) based on existing attribute rating data stored by the client stem and common attributes contained in the meta-data for that data file [col. 8, lines 60-67; col. 30, lines 17-54 and col.43, lines 32-65];

selecting, via the client system, one or more of the plurality of data files described by the meta-data to store

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based on the ratings generated for the plurality of the files [Col. 6, lines 63-67; col. 30, lines 17 to col. 31, line 18 col.43, lines 42-63]; and

selectively storing, by via the client system, the selected one or more of the plurality of data files in response to a later broadcast of those data files by the server system [content profiles with electronic program guide data are stored at the set top multimedia terminal col. 26, lines 2-18 and 26-33; Col. 6, lines 63 to col. 7, line 17 and col. 43, lines 5-52].

As per claims 6, Hertz teaches the invention wherein the plurality of data files comprise at least one of video information, graphical information, audio information, multi media information or textual information [Col. 4, line 55-64].

As per claim 7,19 and 23, Hertz teaches a method and apparatus and a machine readable-medium, comprising:

broadcasting meta-data to one or more client systems (Fig.2, 28 and 32), the meta-data including attribute data describing the content of respective data files from among a plurality of data files to be broadcast later by the server system [Col. 42, lines 42 to Col. 43, line 52]; and

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broadcasting a meta-data broadcast schedule prior to broadcasting the metadata, the meta-data broadcast schedule to indicate a time when the meta-data is to be subsequently broadcast [col. 14, lines 24-64 and Col. 42, lines 42 to Col. 43, line 52].

As per claims 9, 21 and 25, Hertz teaches the invention further comprising broadcasting a data file broadcast schedule to indicate a time when each one of the plurality of data files is to be broadcast later [col. 23, lines 40-66 and Col. 26, lines 20-46].

As per claims 10, 14, 18, 22 and 26, Hertz teaches the invention wherein the plurality of data files comprise at least one of video information, graphical information, audio information, multi media information or textual information [abstract].

As per claim 27, Hertz teaches the invention substantially as shown in fig. 5 and 6. This claim has similar limitations as claims 1, 11 and 15. Therefore, it is rejected with the same rationale.

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As per claim 28, Hertz teaches a system of wherein the one or more client systems coupled to the broadcast server through a network [see fig. 4 and 5].

As per claim 29, Hertz teaches system wherein the one or more client systems coupled to the broadcast server through a radio transmission through the atmosphere [fig. 2].

As per claim 30, Hertz teaches system wherein communications between the one or more client systems and the broadcast server are uni-directional [fig. 4 and Col. 41, lines 55-66].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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1. Claims 2-5 and 12,13,16 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Hertz et al USPN (6088722) in view of Payne et al (6021433).

As per claim 2, Hertz teaches the claimed invention as explained above. Hertz does not teach explicitly activating a client system prior to a broadcast of the meta-data by the server system to receive the meta-data. However, Payne et al, in an analogous art, teach a communication server that activates a viewer's computer by sending an alert message notifying about an incoming broadcast data message that is of user's interest [col. 2, lines 65-67 and Col. 3, lines 1-42]. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Payne et al with that of Hertz for the advantage of receiving pertinent broadcast information instantly [Col. 8, lines 61-67 and Col. 9, lines 1-3].

As per claim 3, Hertz teaches the method of claim 2 further comprising receiving a meta-data broadcast schedule broadcast by the server [Col. 42, lines 42 to Col. 43, line 52], while Payne et al teach the client system activated in response to the meta-data broadcast schedule to receive the meta-data broadcast

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[col. 2, lines 65-67 and Col. 3, lines 1-42 and Col. 7, lines 43-67 and Col. 8, lines 1-47].

As per claim 4, Payne et al teach the method further comprising activating a client system prior to a broadcast time of each one of the selected one or more of the plurality of data files broadcast by the server system [col. 2, lines 65-67 and Col. 3, lines 1-42 and Col. 3, lines 1-42 and Col. 7, lines 43-67 and Col. 8, lines 1-47].

As per claim 5, Payne et al teach the method comprising receiving a broadcast schedule of the plurality of data files broadcast by the server, the client system activated in response to the broadcast schedule of the plurality of data files prior to the broadcast of each one of the selected one or more of the plurality of data files by the server system [col. 2, lines 65-67 and Col. 3, lines 1-42 and Col. 3, lines 1-42 and Col. 7, lines 43-67 and Col. 8, lines 1-47].

As per claim 12 and 16, Hertz teaches the system wherein the processor is further caused to receive a meta-data broadcast schedule broadcast by the server [col. 14, lines 24-64 and Col. 42, lines 42 to Col. 43, line 52]; and

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As per the limitation to activate the apparatus in response to the meta-data broadcast schedule prior to the meta-data broadcast [see the rejection on claim 3 above].

As per claims 13 and 17, Hertz teaches the system wherein the processor is further caused to receive a broadcast schedule of the plurality of data files broadcast by the server [col. 14, lines 24-64 and Col. 42, lines 42 to Col. 43, line 52]; and

As to the limitation of activating the apparatus in response to the broadcast schedule of the plurality of data files prior to the broadcast of each one of the selected one or more of the plurality of data files by the server system [see the rejection on claim 4 above].

Conclusion

1. **ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action

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is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yasin Barqadle whose telephone number is 571-272-3947. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 571-272-3949. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR system. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YB

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